

**Rael Automatic Sprinkler Co., Inc. v 20 TSQ
GroundCo LLC**

2024 NY Slip Op 32194(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 160958/2020

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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RAEL AUTOMATIC SPRINKLER COMPANY, INC.,
Plaintiff,

- v -

20 TSQ GROUNDSCO LLC,CNY CONSTRUCTION 701
LLC,NATIXIS REAL ESTATE CAPITAL LLC,NATIXIS,
NEW YORK BRANCH, NEW YORK TUBS, LLC,FACADE
TECHNOLOGY, LLC,HARDER SERVICES,
INC.,SIGNATURE METAL AND MARBLE
MAINTENANCE, LLC,TEXAS SCENIC COMPANY,
INC.,PENGUIN MAINTENANCE AND SERVICES,
INC.,SOLAR ELECTRIC SYSTEMS, INC.,A.F. SUPPLY
CORP., TREX COMMERCIAL PRODUCTS,
INC.,SAFWAY ATLANTIC, LLC,B.A.C.C. BUILDERS
INC.,LIF INDUSTRIES, LLC,CUMMING MANAGEMENT
GROUP, INC.,LIVINGSTON ELECTRICAL ASSOCIATES,
INC.,PGS MILLWORK, INC.,TRANSCONTINENTAL
CONTRACTING, INC.,ARGOSY DESIGNS
INC.,AMERICAN INDUSTRIES CORP. OF NEW YORK,
UNITED STATES INFORMATION SYSTEMS, INC.,PLATT
BYARD DOVELL WHITE ARCHITECTS L.L.P., ASPRO
PLUMBING INC.,DESIMONE CONSULTING
ENGINEERING GROUP, LLC,CONSOLIDATED CARPET
WORKROOM, LLC,BLONDIE'S TREEHOUSE
INCORPORATED, PARAMOUNT PAINTING GROUP,
LLC,DOOR AUTOMATION CORP., SMARTWOOD
INTERNATIONAL LLC,E. FRIEDMAN ASSOCIATES,
INC.,INFINITE SAFETY, QUALITY, AND
CONSTRUCTION MANAGEMENT INC.,ULE GROUP
CORP., TETRA TECH ENGINEERS ARCHITECTS &
LANDSCAPE ARCHITECTS, P.C. D/B/A COSENTINI
ASSOCIATES, D3 LED, LLC,NAVILLUS TILE,
INC.,FACADE MAINTENANCE SYSTEMS LLC,OTIS
ELEVATOR COMPANY, R&S UNITED SERVICES,
INC.,JEROME ALUMINUM PRODUCTS CORP.,
MONTBLEAU & ASSOCIATES, INC.,MARAGOS
PAINTING LLC,NEXT STEP DESIGN, JANTILE
INCORPORATED, JOHN DOE 1 THROUGH 10, 20 TSQ
LESSEE LLC,701 SEVENTH PROPERTY OWNER
LLC,THE WITKOFF GROUP, BURO HAPPOLD
CONSULTING ENGINEERS, P.C.,KINGS COUNTY
WATERPROOFING CORP., SERVICE GLASS & STORE
FRONT CO., INC.,METAL SALES CO., INC.,CORD
CONTRACTING CO. INC.

Defendants.

INDEX NO. 160958/2020
MOTION DATE 06/18/2024
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 403, 404, 405, 406, 407, 408, 409, 410, 413, 414, 415, 416, 417, 419, 427, 431, 432, 433, 434, 435, 436, 437, 438

were read on this motion to

CANCEL LIS PENDENS

On June 18, 2024, Defendant 20 TSQ GroundCo, LLC (“GroundCo”), filed an order to show cause to cancel the Notices of Pendency filed by (1) CNY Construction 701 LLC (“CNY”) (NYSCEF 350); (2) United States Information Systems, Inc. (NYSCEF 238); (3) R&S United Services, Inc. (“R&S”) (NYSCEF 349); (4) Safway Atlantic LLC (“Safway”) (NYSCEF 305); (5) Rael Automatic Sprinkler Co. (“Rael”) (NYSCEF 4); and (6) B.A.C.C. Builders, Inc. (“BACC”) (NYSCEF 257).

GroundCo asserted that the underlying liens had been discharged, and therefore the Notices of Pendency should be canceled (NYSCEF 371 ¶ 3). The Court signed the order to show cause on June 20, 2024 (NYSCEF 400).

CPLR 6501(a) provides that “[a] notice of pendency may be filed in any action in a court of the state . . . in which the judgment demanded would affect the title to, incumbrance of, or the possession, use or enjoyment of, real property[.]” Our courts deem this to be a “procedural prerequisite[.]” and if an action fails to meet this prerequisite because there is no “direct relationship” between the title or possession of the land and the action, “the remedy was denied” (*5303 Realty Corp. v O&Y Equity Corp.*, 64 NY2d 313, 321 [1984]). CPLR 6514(a) requires cancellation of a notice of pendency “if the action has been settled, discontinued or abated[.]” Furthermore, under CPLR 6515, “[i]n any action other than a foreclosure action . . . the court . . .

may direct any county clerk to cancel a notice of pendency . . . if the moving party shall give an undertaking in an amount to be fixed by the court” in non-foreclosure actions.

Contractors and subcontractors “shall have a lien for the principal and interest, of the value, or the agreed price” of their services “from the time of filing a notice of such lien” (LIEN L. § 3). Discharge of a lien is addressed in Lien Law § 19(4), which provides in part that:

[a] lien other than a lien for labor performed or materials furnished for a public improvement specified in this article, may be discharged as follows:

. . .

(4) [e]ither before or after the beginning of an action by the owner or contractor executing a bond or undertaking in an amount equal to one hundred ten percent of such lien conditioned for the payment of any judgment which may be rendered against the property for the enforcement of the lien

Under Lien Law § 17, “[w]here a lien is discharged by deposit or order, a notice of pendency of action shall not be filed.”

R&S and BACC¹ oppose the motion, chiefly because GroundCo has not bonded over the total amount of judgment *interest* which has accrued by virtue of their lien claims (NYSCEF 406 ¶ 19, 413 ¶ 6). However, the amount of the lien is determined “from the time of filing of the notice” of the lien (LIEN L. § 3). GroundCo has shown that the liens are discharged as a matter of record (NYSCEF 380, 383, 386, 391, 392, 395, 398). No party has disputed that the bonds cover 110% of the amounts indicated in the lien notices, as required by Lien Law § 19(4) (*see* NYSCEF 372-98). Therefore, the liens are discharged and the Notices of Pendency are properly

¹ Consolidated Carpet Workroom, LLC (“CCW”) originally filed an opposition affidavit, but it was withdrawn (NYSCEF 417; 419).

canceled because and the action no longer “affect[s] the title to, incumbrance of, or the possession, use or enjoyment of, real property” (CPLR 6501[a]).²

Therefore, it is

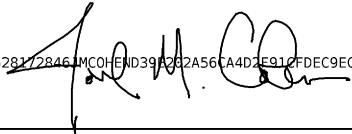
ORDERED that GroundCo’s motion to cancel the notices of pendency (MS 029) is **granted**; it is further

ORDERED that the above-referenced Notices of Pendency against the property designated as **Block 1000, Lot 1** on the Tax Map for the City of New York and more commonly known as 701 7th Avenue, New York, New York 10036, filed in the office of the Clerk of the County of New York, are hereby canceled of record, and the Clerk of the County of New York be and is hereby directed to make a note of cancellation on the margin of the records of the Notices of Pendency referring to this order, including:

Filing Date	NYSCEF Number	Filing Party
January 22, 2024	350	CNY Construction 701 LLC
February 16, 2022	238	United States Information Systems, Inc.
January 13, 2023	305	Safway Atlantic LLC
December 16, 2020	4	Rael Automatic Sprinkler Co.
January 11, 2024	349	R&S United Services, Inc.
March 28, 2022	257	B.A.C.C. Builders Inc.

² Rael files a responsive affidavit, but does not oppose the relief sought in the motion. Rather, it requests that the caption be amended to include the Surety (NYSCEF 403). However, due to the expedited relief sought by GroundCo, the Court limits the scope of this decision to the cancelation of the Notices of Pendency. The Court will consider an amended caption upon an appropriate filing.

This constitutes the Decision and Order of the Court.

20240628172846 JMCHEID391262A56CA4D7E912FDEC9EC4D2719


6/28/2024
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE